



# House of Representatives

**File No. 883**

General Assembly

January Session, 2013

**(Reprint of File No. 205)**

Substitute House Bill No. 5761  
As Amended by House Amendment  
Schedules "A" and "C"

Approved by the Legislative Commissioner  
May 31, 2013

## **AN ACT CONCERNING NURSING HOME NOTIFICATIONS AND SHELTER PROVISIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-528a of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2013*):

3 For any application of licensure for the acquisition of a nursing  
4 home filed after July 1, 2004, any potential nursing home licensee or  
5 owner shall submit, in writing, a change in ownership application with  
6 respect to the facility for which the change in ownership is sought.  
7 Such application shall be prescribed by the Commissioner of Public  
8 Health and include such information as the commissioner deems  
9 necessary. The first page of the application shall include the following  
10 statement: "NOTICE: The State of Connecticut values the quality of  
11 care provided to all of our residents. Please know that any nursing  
12 home licensee, owner or officer, including, but not limited to, a  
13 director, trustee, limited partner, managing partner, general partner or  
14 any person having at least a ten per cent ownership interest in the

15 nursing home or the entity that owns the nursing home, and any  
16 administrator, assistant administrator, medical director, director of  
17 nursing or assistant director of nursing, may be subject to civil and  
18 criminal liability, as well as administrative sanctions under applicable  
19 federal and state law, for the abuse or neglect of a resident of the  
20 nursing home perpetrated by an employee of the nursing home.". The  
21 application shall also include [such information as the Commissioner  
22 of Public Health deems necessary and] whether such potential nursing  
23 home licensee or owner (1) has had three or more civil penalties  
24 imposed through final order of the commissioner in accordance with  
25 the provisions of sections 19a-524 to 19a-528, inclusive, or civil  
26 penalties imposed pursuant to the statutes or regulations of another  
27 state, during the two-year period preceding the application, (2) has  
28 had in any state sanctions, other than civil penalties of less than twenty  
29 thousand dollars, imposed through final adjudication under the  
30 Medicare or Medicaid program pursuant to Title XVIII or XIX of the  
31 federal Social Security Act, 42 USC 301, as from time to time amended,  
32 or (3) has had in any state such potential licensee's or owner's  
33 Medicare or Medicaid provider agreement terminated or not renewed.  
34 In the event that a potential nursing home licensee or owner's  
35 application contains information concerning civil penalties, sanctions,  
36 terminations or nonrenewals, as described in this section, the  
37 commissioner shall not approve the application to acquire another  
38 nursing home in this state for a period of five years from the date of  
39 final order on such civil penalties, final adjudication of such sanctions,  
40 or termination or nonrenewal, except for good cause shown.

41 Sec. 2. (NEW) (*Effective October 1, 2013*) The statement that the  
42 Commissioner of Public Health is required to include in change in  
43 ownership applications pursuant to section 19a-528a of the general  
44 statutes, as amended by this act, shall not be construed as expanding  
45 or otherwise affecting the liability of nursing home licensees, owners  
46 or officers, including, but not limited to, a director, trustee, limited  
47 partner, managing partner, general partner or any person having at  
48 least a ten per cent ownership interest in the nursing home or the

49 entity that owns the nursing home, as well as any administrator,  
50 assistant administrator, medical director, director of nursing or  
51 assistant director of nursing, that may exist at law for the abuse or  
52 neglect of a resident of the nursing home.

53 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) (1) For purposes of this  
54 section and section 4 of this act, "nursing home facility" has the same  
55 meaning as provided in section 19a-521 of the general statutes, (2)  
56 "state of emergency" means a declaration by the Governor pursuant to  
57 section 28-9 of the general statutes, (3) "disabilities" has the same  
58 meaning as provided in section 46a-8 of the general statutes, and (4)  
59 "emergency shelter" means a facility designated in a city, town or  
60 regional emergency plan of operation to provide refuge to state  
61 residents.

62 (b) The Commissioner of Public Health shall establish a streamlined  
63 waiver approval process to permit nursing home facilities to provide  
64 care and shelter to state residents displaced during a state of  
65 emergency. Such process shall include, but not be limited to, a waiver  
66 provision allowing nursing home facilities to exceed licensed bed  
67 capacity by up to ten per cent to take in displaced residents.

68 (c) The Commissioner of Public Health, in consultation with the  
69 Commissioners of Social Services and Emergency Services and Public  
70 Protection, shall adopt or amend regulations, in accordance with  
71 chapter 54 of the general statutes, to implement and administer the  
72 provisions of this section.

73 Sec. 4. (NEW) (*Effective October 1, 2013*) The Commissioner of  
74 Emergency Services and Public Protection, acting in consultation with  
75 the Commissioner of Public Health, shall encourage local emergency  
76 management directors to include in emergency plans of operation,  
77 submitted to the commissioner pursuant to section 28-7 of the general  
78 statutes, plans to: (1) Identify, to the extent reasonably possible, elderly  
79 persons and persons with disabilities who are receiving care in home  
80 and community-based settings and the level of care and services such

81 persons will require in the event of an emergency; (2) provide shelter  
82 at a skilled nursing facility or nursing home facility for persons whose  
83 medical needs require such shelter, to the extent such facilities are  
84 available; and (3) provide shelter, in accordance with Title II of the  
85 Americans with Disabilities Act of 1990, 42 USC 12131 to 12134,  
86 inclusive, as amended from time to time, at existing emergency  
87 shelters for persons whose needs do not require hospitalization or  
88 medical care in a skilled nursing facility or a nursing home facility. The  
89 executive director of the Office of Protection and Advocacy for Persons  
90 with Disabilities, in consultation with the Commissioner of Emergency  
91 Services and Public Protection, shall make information and resources  
92 available to chief executive officers of cities and towns and local  
93 emergency management directors concerning their responsibilities for  
94 the provision of shelter under state law and the Americans with  
95 Disabilities Act.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	19a-528a
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

The bill requires inclusion of a notice in change of nursing home ownership applications starting 10/1/13. There is no fiscal impact from this requirement as it is anticipated that the Department of Public Health (DPH) will add this notice to the application that it provides online. Should DPH choose to provide this application in hardcopy, there is space available within it to include the notice without incurring an additional cost. The bill also includes various emergency-related provisions that are not anticipated to result in a fiscal impact to DPH, the Department of Emergency Services and Public Protection, the Office of Protection and Advocacy for Persons with Disabilities or municipalities.

House "A" strikes the underlying bill and its associated fiscal impact and replaces it with language that requires inclusion of a notice in change of nursing home ownership applications and has no associated fiscal impact. House "C" includes various emergency-related provisions that do not result in a fiscal impact.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

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**OLR Bill Analysis****sHB 5761 (as amended by House "A" and "C")\******AN ACT CONCERNING NOTIFICATION TO POTENTIAL AND EXISTING NURSING HOME OWNERS.*****SUMMARY:**

This bill requires:

1. the Department of Public Health (DPH) to include in its application form for changes in nursing home ownership a statement notifying the potential licensee or owner that he or she may be held civilly or criminally liable for abuse or neglect of a resident by a nursing home employee;
2. the DPH commissioner to establish a streamlined waiver approval process that allows nursing home facilities to provide care and shelter to residents displaced during a state of emergency; and
3. the Department of Emergency Services and Public Protection (DESPP) to encourage local emergency management directors to include in their emergency plans ways to identify elderly and disabled residents receiving home and community-based care and provide them shelter at nursing home facilities and emergency shelters during an emergency.

\*House Amendment "A" replaces the original bill (File 205). It removes the provision requiring DPH, by January 1, 2014, to provide a written copy of the notification statement to any person issued a DPH nursing home license as of October 1, 2013. It also (1) makes minor changes to the statement's content and (2) provides that the statement does not expand or otherwise affect the liability of all parties specified

in the statement, not just nursing home licensees and owners.

\*House Amendment "C" adds the provisions regarding the (1) nursing home bed capacity waiver and (2) local emergency plans of operation.

EFFECTIVE DATE: October 1, 2013

### **NOTIFICATION STATEMENT**

The bill requires DPH to prepare a written application form for changes in nursing home ownership that includes a statement notifying the potential nursing home licensee or owner that he or she may be held civilly or criminally liable for abuse or neglect of a resident by a nursing home employee. Specifically, it requires the following statement to be placed on the first application page:

"NOTICE: The State of Connecticut values the quality of care provided to all of our residents. Please know that any nursing home licensee, owner, or officer, including but not limited to, a director, trustee, limited partner, managing partner, general partner, or any person having at least a ten percent ownership interest in the nursing home or the entity that owns the nursing home, and any administrator, assistant administrator, medical director, director of nursing, or assistant director of nursing, may be subject to civil and criminal liability, as well as administrative sanctions under applicable federal and state law, for the abuse or neglect of a resident of the nursing home perpetrated by an employee of the nursing home."

The bill specifies that the notification statement does not expand or otherwise affect any existing statutory liability of the above specified parties for the neglect or abuse of nursing home residents.

### **NURSING HOME BED CAPACITY WAIVER**

The bill requires the DPH commissioner to establish a streamlined waiver approval process that allows nursing home facilities to exceed their licensed bed capacity by up to 10% to take in residents displaced during a state of emergency. The DPH commissioner, in consultation

with the social services and DESPP commissioners, must adopt regulations to implement this process.

### **LOCAL EMERGENCY PLANS**

The bill requires the DESPP commissioner, in consultation with the DPH commissioner, to encourage local emergency management directors, in their emergency plans of operation, to:

1. identify, to the extent reasonably possible, elderly and disabled residents receiving home and community-based care and the level of care and services they will require during an emergency;
2. provide shelter at a skilled nursing facility or nursing home facility for residents whose medical needs require it, to the extent the facilities are available; and
3. provide shelter, in accordance with the federal Americans with Disabilities Act (ADA), at existing emergency shelters for residents who do not require hospitalization or nursing home facility care.

The bill requires the Office of Protection and Advocacy for Persons with Disabilities, in consultation with the DESPP commissioner, to make information and resources available to municipal chief executive officers and local emergency management directors concerning their responsibilities for providing shelter under state law and the ADA.

### **BACKGROUND**

#### ***DPH Applications for Nursing Home Ownership Changes***

By law, DPH must approve changes in nursing home ownership. The prospective owner's or licensee's written application must include whether the potential nursing home licensee or owner (1) has had civil penalties for nursing home violations imposed by DPH or another state during any two-year period or (2) received intermediate Medicare or Medicaid sanctions or had provider agreements for these programs terminated or not renewed. The law prohibits the DPH commissioner from approving an application to acquire a nursing



home for a five-year period if any of these conditions occurred, unless good cause is shown (CGS § 19a-528a).

***Evaluation Period for New Licensees***

If a person has not previously operated a nursing home in Connecticut, DPH can institute an “evaluation period” of up to five years from the time of initial licensure in order to assess the standard of care the nursing home provides. During this evaluation period, the person is prohibited from acquiring any additional nursing homes (CGS § 19a-493a).

**COMMITTEE ACTION**

Aging Committee

Joint Favorable Change of Reference

Yea 11 Nay 0 (02/14/2013)

Public Health Committee

Joint Favorable

Yea 21 Nay 7 (03/11/2013)